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COMMISSION OF THE EUROPEAN COMMUNITIES

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COM(77) 725 final.

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Proposal for
COUNCIL REGULATION (EEC)

amending Regulation (EEC) N° 804/68 on the common organization of the market
in milk and milk products.

Proposal for
COUNCIL REGULATION (EEC)

laying down general rules for milk producers' organizations.

Proposal for
COUNCIL REGULATION (EEC)

relating to the Northern Ireland Milk Marketing Board.

(submitted to the Council by the Commission)

COM(77) 725 final.

EXPLANATORY NOTE

1. At the time of the accession negotiations, the United Kingdom Delegation raised the question of the compatibility with the Community law of the Milk Marketing Boards in that new Member State. The question was the subject of an exchange of official declarations between the United Kingdom and the Community, which were included in the annex to the Accession Treaty⁽¹⁾.
2. An in-depth examination of the question has led to the conclusion that in certain respects the compatibility with Community law of the national legal framework and functions of the Milk Marketing Boards could be contested. United Kingdom legislation confers on these organizations certain rights which are, particularly as far as the exclusive right to purchase in a determined region and the equalization of prices are concerned, alien to the common organization of the market in milk and milk products as established by Regulation (EEC) No 804/68⁽²⁾. The regularization of this situation has now become increasingly necessary particularly in view of the expiry of the transition period and the termination of the system of guaranteed producer prices which was closely linked with the present operation of the Boards.
3. However, the activities of the Milk Marketing Boards have up to now helped to channel the predominant quantity of milk produced in the United Kingdom for direct human consumption in the form of liquid milk. This coincides with Community policy in the milk and milk products sector, which now aims to reduce the high public costs arising from an unlimited application of the intervention system, in particular for butter and skimmed milk powder, while at the same time maintaining a fair standard of living for the farming population.
4. In the circumstances, a solution should be sought which will reconcile the following interests of Community:
 - ensuring observance of the general principles of the Treaty, in particular the free movement of goods and the correct functioning of the common organization of the market in milk and milk products;
 - continuing to safeguard certain positive results achieved by the organizations in question.

Accordingly, the common organization of the market should be supplemented by the inclusion of provisions which would make it possible to confer certain rights on organizations of milk producers at Community level, so that they can pursue the desirable objective of maximization of the direct consumption of milk.

(1) OJ No L 73, 27.3.1972, pp 198 to 200
(2) OJ No L 148, 28.6.1967, p. 13

5. The Commission therefore proposes that the Council adopt the following three regulations;

(a) Regulation amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products

This instrument provides for inclusion in the basic regulation of a provision whereby producers' organizations could be granted:

- the exclusive right, within certain limits, to purchase milk produced in the area concerned,
- the right to equalize the prices paid to producers.

Conferment of these rights is subject to the following conditions:

- that a predominant quantity of the milk produced in the area concerned is used for direct human consumption,
- that in number at least 80% of the producers established in the area concerned are voluntary members of the organization.

(b) Regulation relating to the Northern Ireland Milk Marketing Board

This instrument takes account of the special economic and political situation of Northern Ireland and confers the above-mentioned rights on the Milk Marketing Board of that region provided that the conditions laid down are met, except for the condition that a predominant quantity of the milk produced must be used for direct human consumption.

(c) Regulation laying down general rules for milk producers' organizations

This instrument contains:

- details regarding the conditions laid down by the new provision in the basic regulation;
- provisions on the procedure whereby the rights in question may be granted;
- detailed rules to guarantee that the exercise of these rights does not run counter to the general principles of the Treaty, does not effect the rules of competition more than necessary and does not jeopardize the correct functioning of the existing mechanisms of the common organization of the market.

6. In proposing these instruments, the Commission wishes to stress that their adoption would not automatically regularize the present situation in the United Kingdom or the maintenance of all the Milk Marketing Boards' activities under present national legislation. Certain rights not covered by the proposed instruments and hitherto enjoyed by these organizations must be given up, in particular where the processing of milk is concerned.

The Commission has given the United Kingdom authorities a detailed list of the conditions which they and the organizations concerned must satisfy if the authorization covered by the provisions to be included in the basic regulation is to be granted and maintained in the future.

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Proposal for
COUNCIL REGULATION (EEC)

amending Regulation (EEC) No 804/68 on the common organization of the market
in milk and milk products

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and
in particular Articles 42 and 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament⁽¹⁾,

Having regard to the Opinion of the Economic and Social Committee⁽²⁾,

Whereas the aim of the common agricultural policy is to attain the objectives set out in Article 39 of the Treaty; whereas, to that end, Council Regulation (EEC) No 804/68 of 27 June 1968⁽³⁾, as last amended by Regulation (EEC) No /78⁽⁴⁾, established a common organization of the market in milk and milk products; whereas to stabilize the markets and to ensure a fair standard of living for the agricultural community concerned, the common organization provides for intervention measures on the market; whereas, by reason of the high cost to the Community of the said intervention system, it appears advisable to turn to other mechanisms for attaining the same objectives and to have less recourse to intervention measures;

Whereas in this connection the "Milk Marketing Boards" existing in the United Kingdom should in particular be taken into consideration; whereas certain of their activities have helped to channel the predominant quantity of milk produced in this Member State into direct human consumption; whereas the milk marketing boards have certain prerogatives to ensure that they operate effectively; whereas they have in principle the exclusive

right to purchase milk from producers established in their area; whereas it appears appropriate to recognize such organizations under the common organization

⁽¹⁾ OJ No C
⁽²⁾ OJ No C

⁽³⁾ OJ No L 148, 28.6.1968, p. 13
⁽⁴⁾ OJ No L

of the market subject to ensuring that their prerogatives are compatible with Community law, while at the same time observing the general principles of the Treaty; whereas, to that end, the conferment or maintenance of the said prerogatives should be conditional upon an examination of each individual case at Community level and upon authorization being granted to the Member State concerned;

HAS ADOPTED THIS REGULATION:

Article 1

Article 25 of Regulation (EEC) No 804/68 is amended as follows:

"Article 25

1. Member States may be authorized to confer on milk producer organizations operating in a region in which for three years preceding the date on which the application is submitted a predominant quantity, to be determined, of the milk produced in the region has been used for direct human consumption in the form of whole drinking milk or other fresh products:
 - (a) the exclusive rights, within the limits laid down pursuant to paragraph 3, to purchase from the producers established in the region concerned all the milk produced by them. The said right shall carry with it the obligation on the part of the organizations in question to purchase the milk offered to them by the producers concerned;
 - (b) the right to equalize the prices paid to producers, irrespective of the destination of the milk supplied by each of them.
2. The conferment of the rights provided for in paragraph 1 and the maintenance of such rights is conditional upon the voluntary membership of the organization including not less than 80% of all milk producers in the region concerned.
3. General rules for the application of this Article shall be adopted by the Council acting by a qualified majority on a proposal from the Commission.

They shall include the following:

(a) provisions guaranteeing that the exercise of the rights provided for by paragraph 1:

- does not contravene the general principles of the Treaty and in particular the free movement of goods and non-discrimination between producers selling their milk to the organization and between purchasers of milk from the organization,
- does not affect the rules governing competition in agriculture more than is strictly necessary and
- does not adversely affect the working of the common organization of the market in milk and milk products, in particular as regards the price and intervention system;

(b) the procedure for obtaining the authorization referred to in paragraph 1, and the circumstances in which such authorization can be withdrawn;

(c) as regards organizations existing when this Article enters into force, provisions for their progressive adaptation to these provisions, within a maximum period to be determined; such measures may not, however, affect the principles referred to in the first indent of (a).

4. Detailed rules for the application of this Article, and in particular the authorization referred to in paragraph 1, shall be adopted in accordance with the procedure laid down in Article 30."

Article 2

This Regulation shall enter into force on the third day following its publication in the Official Journal of the European Communities.

Done at Brussels,

For the Council

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Proposal for
COUNCIL REGULATION (EEC)

laying down general rules for milk producers' organizations

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
Having regard to the proposal from the Commission,
Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the
common organization of the market in milk and milk products⁽¹⁾, as last amended
by Regulation (EEC) No /78⁽²⁾, and in particular Article 25(3) thereof,

Whereas pursuant to Article 25(1) of Regulation (EEC) No 804/68 Member States
may be authorized to confer on producers' organizations the exclusive right to
purchase milk produced in the region concerned and the right to equalize the
prices paid to producers; whereas it is necessary to lay down general rules
on the subject;

Whereas the conditions which a producers' organization must fulfil in order to obtain
this right, in particular as to the delimitation of the area in which it operates, the
predominant quantity of milk produced in the area and used for direct human
consumption and the proportion of producers it represents are referred to in
Article 25(2) of Regulation (EEC) No 804/68;

Whereas with respect to the exercise of the rights granted to such an organization,
detailed rules should be adopted at a Community level in the light of the
criteria referred to in paragraph 3(a) of the abovementioned Article; whereas
the circumstances in which producer members of an organization may withhold
milk from sale to the organization in question should be specified; whereas

⁽¹⁾ OJ No L 148, 28.6.1968, p. 13
⁽²⁾ OJ No L

equality of access and treatment of all willing purchasers of milk from the organization should be ensured; whereas specific rules should be laid down for producers who sell their milk directly to the final consumer;

Whereas provision should be made for the adoption of transitional measures to enable organizations established before this Regulation comes into effect to adapt to the Community provisions that will henceforth be applicable;

Whereas the provisions of this Regulation also apply to the Milk Marketing Board of Northern Ireland to which the derogation provided for in Council Regulation (EEC) No /78 of 1978⁽³⁾ applies;

Whereas any authorization to confer the rights in question must be granted subject to the possibility of subsequent adjustment to take account in particular of changes in Community legislation,

HAS ADOPTED THIS REGULATION:

Article 1

1. For the purpose of Article 25 of Regulation (EEC) No 804/68 and this Regulation the following definitions shall apply:

(a) area:

part of the national territory in which a minimum quantity of milk, to be determined, is produced and which, on account of its geographical and economic situation, can be regarded as a unit, account being taken of administrative boundaries and the historical structures of the milk industry;

(b) producer:

a farmer, either a natural or legal person, engaged in the production of cows' milk;

(c) producer retailer :

an individual producer whose herd does not exceed 150 milking cows and who sells the milk of his cows kept on his holding directly to the final consumer in the form of milk or other milk products; the producer retailer may however:

(3) OJ No L

- sell up to 25% of his annual production for uses other than for direct consumption during periods of surplus,
- sell the remainder in periods of shortage a quantity of milk purchased from other producers not exceeding 25% of his own annual production.

2. The predominant quantity referred to in Article 25(1) of Regulation (EEC) No 804/68 shall be equal to at least 50%.
For the purposes of Article 2(5) of this Regulation this percentage must remain above 50%.
3. In order to establish the degree of representativity mentioned in Article 25(2) of Regulation (EEC) No 804/68:
 - a) Producers who have not expressed an opinion after being individually invited to do so shall not be taken into account.
 - b) Producers retailers are to be taken into account at the time of the consultation held as a preliminary to the grant of the rights referred to in Article 25(1) of Regulation (EEC) No 804/68.
 - c) At the time of subsequent consultations and for the application of Article 2(5) Producer Retailers who have sent the statement referred to in Article 4(2) a to the organization shall not be taken into account.

Article 2

1. If a producers' organization wishes to take advantage of the rights referred to in Article 25(1) of Regulation (EEC) No 804/68, an application shall be made to the appropriate authority in the Member State concerned together with the following supporting documents:
 - (a) its statutes;
 - (b) the precise delimitation of the area in which it operates;
 - (c) except in the case of the derogation provided for in Regulation (EEC) No /78, the statistics required to establish that the predominant quantity of milk produced in the area has for the three years preceding the date of the application been used in accordance with Article 25(1) of Regulation (EEC) No 804/68;
 - (d) documents showing what proportion of producers the organization represents, in accordance with Article 25(2) of Regulation (EEC) No 804/68,
 - (e) annual balance sheet for the last three years or, in the case of more recently established organizations, all the balance sheets produced since its creation.

2. The appropriate authority of the Member State concerned shall verify the data referred to in paragraph 1 (b) to (e), endorse the application with a reasoned recommendation and, if the recommendation is favourable, forward the application to the Commission with a request for the authorization referred to in Article 25 of Regulation (EEC) No 804/68.
3. The authorization shall be granted subject to the possibility of subsequent amendment to bring it and the conditions to which it is subject into line with any subsequent change in Community legislation.

In its communication to the organization in question regarding the authorization granted, the Member State concerned shall make mention of the reservation referred to in the above paragraph.

4. The Commission may attach special conditions to the authorization granted in order to:
 - a) guarantee the respect of the principles referred to in Article 25(3) a of Regulation (EEC) No 804/68
 - b) take account of the specific situation of the organization concerned and
 - c) leave as far as possible unaffected the present rights of producers in the case of an organization which is already in existence at the time of entry into force of this Regulation.
5. The competent authority of the Member State concerned shall take appropriate measures for verifying from time to time that the conditions on which authorization was granted are still fulfilled.

If the authority finds that one or more of the required conditions is no longer fulfilled, the Member State concerned shall immediately inform the Commission which will examine the reasons for this. In such a case or if the Commission itself becomes aware of such a situation the Commission shall examine the reasons for this.

The Commission, taking account of the development of trends in the milk sector in the region and Member State concerned, may either, issue recommendations to this Member State in order to facilitate the compliance by the organization with the conditions laid down, or annual, in accordance with the procedure referred to in Article 25(4) of Regulation 804/68 the authorization notified to such Member State, after having, should the need arise, fixed a temporary extension of time.

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Article 3

1. The statutes referred to in Article 2(1)(a) must
 - (a) include provisions to ensure that at least every 5 years the producers who are members of the organization, or all the producers in the region concerned if the organization has been granted the rights referred to in Article 25(1) of Regulation (EEC) No 804/68, are individually consulted, in order to ensure that the organization represents a due proportion of producers, in accordance with paragraph 2 of the said Article;
 - (b) oblige the organization, if its statutes allow it to undertake processing of milk, to maintain separate accounts and separate management and administration in respect of these activities in order that the processing undertakings of the organization may be on an equal footing with other independent processing undertakings, particularly in respect of availability of supplies, prices paid, credit and loan facilities and other financial transfers to such undertakings.
2. The Member State concerned shall adopt appropriate measures to ensure that the profit made by the organization is strictly limited to the minimum necessary to enable it to carry out the objects mentioned in its statutes and that the corresponding financial resources are used only for that purpose.
3. The imposition of compulsory financial levies on producers selling their milk to the organization :
 - a) can only take place to the extent necessary to enable the organization to perform the functions mentioned in its statutes,
 - b) shall be subject to an appropriate authorization which is to be requested and accorded according to the same procedure as the grant of rights referred to in Article 25(1) of Regulation (EEC) No 804/68.

Article 4

The following rules shall apply to the exercise of the rights referred to in Article 25(1) of Regulation (EEC) No 804/68:

1. The organization's exclusive right and obligation to purchase milk produced in the region concerned from the producers shall not cover those quantities of milk which the producer withholds from sale to the organization for:
 - (a) marketing, as such or as processed products, in a non-member country or in another Member State, or
 - (b) processing into other products, effected outside the region covered by the organization of which the producer is a member, or
 - (c) processing into butter or skimmed milk powder for sale to the intervention agency, where it is found, in accordance with criteria to be laid down, that the price paid to the producer by the organization has, for a period to be laid down, been below the level of intervention prices in force during the same period, taking into account the market situation.

Producers may form groups and/or make use of intermediaries in order to carry out the operations referred to in sub-paragraph (a), (b) and (c).

2. The exclusive right and the obligation to purchase referred to in paragraph 1 do not apply
 - (a) to milk produced by producer retailers, as defined in Article 1(1)(c), who have stated in writing to the organization that they do not wish to become members,
 - (b) to milk sold to a producer retailer by other producers, within the limits referred to in the second indent of Article 1(1)(c).
 - (c) milk which the producer excludes from sale to the organization with the consent of the latter.
3. Under conditions to be laid down, the Member State concerned shall take the necessary steps to ensure equal access to milk sold by the organization to all willing purchasers using milk for the same purpose.

The measures referred to in the first subparagraph shall in particular provide for a system of periodical open tendering, or a system for fixing prices which provides equivalent guarantees, whereby the transparency and advance publication of the sale prices in force is ensured.

Article 5

1. If transitional measures prove necessary to assist producer organizations which already exist at the date of entry into force of this Regulation to adapt to the system laid down in this Regulation, such measures shall be adopted in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68.

Such measures shall not apply for longer than two years from the date of entry into force of this Regulation.

2. In the case of a producer organization which already exists at the date of entry into force of this Regulation, the authorization granted to the Member State concerned may be provisional so that the Member State and the organization may adapt, within a period to be laid down, to the provisions of this Regulation and/or to specific conditions to be laid down.

Article 6

This Regulation shall enter into force on

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

Proposal for
COUNCIL REGULATION (EEC)

relating to the Northern Ireland Milk Marketing Board

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 42 and 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament⁽¹⁾,

Having regard to the Opinion of the Economic and Social Committee⁽²⁾,

Whereas Article 25 of Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products⁽³⁾, as last amended by Regulation (EEC) No /78⁽⁴⁾, provides that the Member States may be authorized to confer on producer organizations the exclusive right to purchase milk produced in the region concerned and the right to equalize the prices paid to producers; whereas such authorization is conditional on the organization in question exercising its activities in a region where, over the preceding three years, a predominant quantity of the milk produced has been used for direct human consumption;

Whereas essential features of the United Kingdom milk industry are the organizations known as milk marketing boards which, with the exception of the Milk Marketing Board in Northern Ireland, would qualify for the abovementioned authorization; whereas the latter region is the only region in the United Kingdom where, for geographical and demographic reasons, a predominant quantity of the milk produced cannot be channelled into direct human consumption;

(1) OJ No C
(2) OJ No C
(3) OJ No L 148, 28.6.1968, p. 13
(4) OJ No L

Whereas, to prevent disturbances on the United Kingdom milk market and in order not to hamper the development of the market in the region concerned given its special economic and political situation, provision should be made, by way of derogation from the condition laid down by Article 25(1) of Regulation (EEC) No 804/68, that the rights provided for therein may be conferred on the Northern Ireland Milk Marketing Board provided that the other conditions laid down in that Article, or adopted pursuant to that Article, are fulfilled,

Whereas this derogation should be subject to review at a later day, in the light of the implementation of Article 25 of Regulation (EEC) No 804/68 in Northern Ireland and the other regions of the United Kingdom,

HAS ADOPTED THIS REGULATION:

Article 1

By way of derogation from Article 25(1) of Regulation (EEC) No 804/68 and without prejudice to the other provisions of that Article, the rights provided for in the said paragraph may be conferred on the Northern Ireland Milk Marketing Board even though a predominant quantity of the milk produced in its operating region has not been used for direct human consumption over the specified reference period.

Article 2

In the event of Article 1 being applied, the Commission shall present to the Council and to the European Parliament by * at the latest a report on the application of that provision and, where necessary, shall, acting in accordance with the procedure provided for in Article 43(2) of the Treaty, propose to the Council any necessary amendments to this Regulation.

Article 3

This Regulation shall enter into force on

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

* Date to be inserted: five years calculated from the date on which this Regulation enters into force.

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Brussels 22 décembre 1977

20(77) D/ 13427

MINUTE

Subject: United Kingdom Milk Marketing Boards

Sir,

I would refer to the exchanges of views which have taken place on this subject between United Kingdom and Commission Officials.

I am now able to inform you that the Commission has taken a decision on proposals to the Council concerning a Draft Regulation amending Regulation 204/69 and a Regulation laying down general rules relating to operation of producers' organizations in the milk sector. If these texts are adopted they could, subject to certain conditions, enable the United Kingdom to be authorized to maintain, providing the consent of the required majority of producers is forthcoming, its present Boards with their present powers and disciplines intact for most purposes.

The Commission must however emphasize that, in addition to the matters which it is proposed to regulate specifically in one or other of the legal texts referred to above or in detailed rules of application, your Government would need to give certain parallel undertakings before the United Kingdom could be authorized to recognize the Boards in accordance with these Regulations.

I shall therefore be pleased if you will confirm at the earliest possible moment that your Government:

- (a) will undertake to ensure that the influence in law, or influence which it exercises in practice over the Boards' policy making is reduced to the minimum, it being however understood that the United Kingdom authorities will maintain sufficient powers for securing that the Boards comply with Community requirements and for safeguarding the interests of individuals groups or corporations from any abuse of their powers.

The Right Hon. John SILKIN M.P.
Minister of Agriculture, Fisheries and Food.
Whitehall Place

LONDON SW1 A 2 HH

The Commission would stress the importance of this supervisory function, particularly in relation to the necessity of securing observance of the various detailed conditions to which the initial and continued authorization of the Boards would be subject.

- (b) (i) Accepts that it is in the Community interest that progress should be made towards the early adoption of Directives concerning health problems in the milk sector, particularly in relation to raw and heat treated milk in order to secure the abolition of the remaining impediments to free circulation of milk and fresh milk products within the Community;
- (b) (ii) Acknowledges that, with the exception of such animal and human health restrictions as may for the time being be justified under Article 36 of the EEC Treaty, no barriers may be placed in the way of imports of milk and fresh products into the United Kingdom.
- (c) will secure the abolition of the control which the Boards have exercised by a licensing system over the establishment of manufacturing and processing plants in the milk sector.
- (d) will secure the abolition of the right of the Boards to call back to the liquid market milk which has already been delivered for manufacture in cases where the manufacturer requires the milk to fulfil an export contract either for liquid milk or milk products.
- (e) will secure that the non-producer members of the Boards are chosen from suitable candidates proposed by organizations representative in particular of consumers and workers and manufacturers in the dairy sector. It should be made clear that although their appointment may be made by the competent Minister they are to be independent of Governmental interests.
- (f) accepts the principle that subject to Community intervention mechanisms and aids authorized by or compatible with Community rules producers' incomes from milk sales should be based entirely on market returns.

The Commission must also emphasize that the regulation of milk prices by direct governmental action or by powers delegated to the Boards can only be imposed to the extent that the functioning of the price system established by the common organization of the market in this sector is not put into jeopardy. In so far as the regulation of prices applies to imported milk and milk products prices fixed must take into account the additional costs inherent in importing such commodities.

The Commission accepts that in view of the highly concentrated nature of the United Kingdom milk market it may not be possible to provide for sale of milk by the Boards on a public tender basis as originally envisaged. However the Commission is of the opinion that authorization to the Boards under the above-mentioned draft Regulations cannot be granted until the existing system of price fixing has been adapted to provide, as far as possible, equivalent guarantees to those of public tender based arrangements. Negotiations should be open to all interested parties and resulting prices should be published before binding contracts are entered into.

The Commission will, in particular, want to discuss further the system of the pricing of milk for manufacture with a view to finding a satisfactory formula which will avoid distortions of competition and ensure that the Boards cannot use their powers as monopoly sellers to manage the market in ways inconsistent with the principle of the free circulation of goods and the Common Organization of the market in this sector. Detailed application rules concerning this formula will be adopted by the Commission.

The Commission has noted the statement in the United Kingdom Permanent Representative's letter of 8 August 1977 that the present consumer subsidy for liquid milk is due to terminate "at the end of 1977". In view of this statement it has not been considered necessary for the Commission to make any further specific comment on this topic in the present letter.

I shall be pleased if you will notify the acceptance of your Government to the above listed conditions as soon as possible.

Please accept, Sir, the assurance of my highest consideration.



